

Legal Writing and Research

Legal Research:

Research means an act of searching into a matter carefully and closely. In other words, “a systematic study or investigation of existing facts or knowledge related to any matter undertaken with the object of finding some truth or reality. One can also define ‘research’ as ‘a scientific and systematic search for pertinent information on a specific topic’.

Legal research refers to “any systematic study of legal rules, principles, concepts, theories, doctrines, decided cases, legal institutions, legal problems, issues or questions or a combination of some or all of them”.

The term *Legal rules* refers to rules recognized and enforceable under any legal system, or rules declared under any constitutional document or statutory provisions framed by law making bodies or authorities or subsidiary legislation framed by administrative bodies or authorities.

The term *Legal principle* means not the actual legal rules but notions, ideas or standards to be followed.

The terms *Concepts, Theories or Doctrines* are ordinarily used to refer to ideas, notions, perceptions or abstract principles that represent a particular view or explain the nature, purpose or function of law.

Objectives of legal research:

- i. To ascertain the nature, purpose policy- objectives of legal rules and principles that govern a specific situation and determine their current relevance, utility, adequacy or efficacy.
- ii. To examine legal principles and precedents as established by as established by courts, tribunals or other authorities having power to decide issues and disputes, with a view to determining their scope of application in a given situation or to evaluate the approach taken by decision- makers on issues of legal significance in any particular area of law.

- iii. To examine concepts, ideas, notions, theories or doctrines in respect of any matter related to law with a view to ascertaining their relevance, correctness, validity, utility or the truth they contain, such as to examine the notion that though laws deter people or that heavy punishments help to reduce the incidence of crime, in order to determine whether the assertion contains any truth in respect of specific crimes or specific groups of people in a population or specific geographical areas.
- iv. To identify the weakness of an existing law or defects in a particular area of law or highlight issues that are not covered or partially covered and examine whether and to what extent a new law or modifications in the existing law would remedy the situation.
- v. To examine the nature and composition of a legal institution, the objectives behind its establishment, the efficacy of its working, its success or failure and examine whether and what changes would be needed it to achieve better results, such as the working of an Industrial Tribunal.
- vi. To compare legal provisions, principles or Institutions existing in a particular legal system with those existing in one or more other legal systems, or within the same legal system, in order to identify similarities and dissimilarities, with a view to presenting new facts or finding some solutions or proposing new ideas for improvement.
- vii. To identify the advantages or disadvantages of certain aspects of law or legal Institutions, with a view to suggesting ways for improvement, such as a comparison between adjudication and arbitration as a means of conflict resolution, in a particular context, or a comparison between the development of law through cases and statutory law in a given situation.
- viii. To study the causes that led to the adoption of a particular law, principle or legal institution, such as a study into the reasons for the enactment of a special law for protecting children or women from abuse or similarly, to study the effects of a law on the attitudes and behaviour patterns of certain classes, or the people generally, such as a study into the efficacy of the law which prohibits smoking at public places.
- ix. To discover new facts, or verify old facts or extend knowledge or develop a theory or arrive at a General Conclusion and make a General statement.

- x. To explain, interpret or evaluate ideas or principles, such as those contained in an authoritative work or theory, with a view to providing further knowledge or explaining its aim, usefulness, value, relevance, correctness or validity.
- xi. To explain the nature and operation of certain legal principles, concepts or processes in actual fact- situations, such as a study of what mitigating factors are taken into account by magistrate's courts while determining the quantum of punishment in certain type of offences and whether they follow any uniform pattern of sentencing.
- xii. To study some social phenomenon to know why or how some facts exist or occur, or ascertain the ideas, opinions, values or behaviour patterns of certain groups or classes of people and relate the phenomenon to some aspects of law.
- xiii. To study some social problem, issue or question and examine how law deals with it or how best law can be changed and Reform to deal with a situation.

Types of Research:

The basic types of research are as follows:

i. *Descriptive or Analytical:*

Descriptive research includes surveys and fact finding enquiries of different kind. The major purpose of descriptive research is description of the state of affairs as it exists at present. In social science and business research we quite often use the term *ex post facto* research for descriptive research studies. The main characteristic of this method is that the researcher has no control over the variables; he can only report what has happened or what is happening. The methods of research utilized in descriptive research are survey methods of all kinds, including comparative and correlational methods. In *analytical research*, on the other hand, the researcher has to use facts or information already available, and analyze these to make a critical evaluation of the material.

ii. *Applied or Fundamental:*

Research can either be applied (action) or fundamental (basic or pure) research. Applied research aims at finding a solution for an immediate

problem facing a society or an industry/ Business organization. Whereas fundamental research is mainly concerned with generalizations and with the formulation of a theory. Gathering knowledge for knowledge's sake is termed 'pure' or basic research. Research concerning some natural phenomenon or relating to pure mathematics are examples of fundamental research. Similarly, research studies, concerning human behaviour carried on with a view to make generalizations about human behaviour, are also examples of fundamental research. But research aimed at certain conclusions facing a concrete social or business problem is an example of applied research. Research to identify social, economic or political trends that may affect a particular institution or the copy research(research to find out whether certain communications will be read and understood) or the marking research or evaluation research are examples of applied research. Thus, the central aim of applied research is to discover a solution for some pressing practical problem, whereas basic research is directed towards finding information that has a broad base of applications and thus, adds to the already existing organised body of scientific knowledge

iii. **Quantitative or Qualitative:**

Quantitative research is based on the measurement of quantity or amount. It is applicable to phenomena that can be expressed in terms of quantity. Qualitative research, on the other hand, is concerned with qualitative phenomenon, i.e. phenomena relating to or involving quality or kind. For instance, when we are interested in investigating the reasons for human behaviour (i.e. why people think or do certain things) we quite often talk of 'Motivation Research', an important type of qualitative research. This type of research aims at discovering the underlying motives and desires by using in depth interviews for the purpose. Other techniques of such research are research word association tests, sentence completion tests, story completion tests and similar other projective techniques. Qualitative research is specially important in the behavioural sciences where the aim is to discover the underlying motives of human behaviour.

iv. **Conceptual or Empirical:**

Conceptual research is that related to some abstract ideas or theory. It is generally used by philosophers and thinkers to develop new concepts are

to reinterpret existing ones. On the other hand, empirical research relies on experience or observation alone, often without due regard for system and theory. It is data - based research, coming up with conclusions which are capable of being verified by observation or experiment. We can also call it as experimental type of research. In such a research it is necessary to get at fax firsthand, at their source, and actively to go about doing certain things to stimulate the production of desired information. In such a research, the researcher must first provide himself with a working hypothesis or guess as to the probable results. He then works to get enough facts (data) to prove or disprove his hypothesis. He then sets up experimental designs which he thinks will manipulate the persons or the materials concerned so as to bring forth the desired information. Search research is thus characterized by the experimenter's control over the variables under study and his deliberate manipulation of one of them to study its effects. Empirical research is appropriate when proof is sought that certain variables affect other variables in some way. Evidence gathered to experiments or empirical studies is today considered to be the most powerful support possible for a given hypothesis.

Besides above mentioned research, some other types of research are also there, which are variation of one or more of the above stated approaches, based on purpose of research, time required, the environment and other similar factors. These are Field- Setting research or Laboratory Research or Stimulation Research; Clinical or Diagnostic Research; Exploratory or Formalized Research; Historical Research; Conclusion- Oriented or Decision-Oriented Research.

Research Methods and Methodology:

Research methods or techniques refer to *the methods the researchers used in performing research operations*. In other words, all those methods which are used by the researcher during the course of studying his research problem are termed as

Research Methods. Research methods can be put into the following three groups:

- i. In the first group we include those methods which are concerned with the collection of data. These methods will be used where the data already available are not sufficient to arrive at the required solution.

- ii. The second group consists of those statistical techniques which are used for establishing relationships between the data and the unknowns;
- iii. The third group consists of those methods which are used to evaluate the accuracy of the results obtained.

The above stated last two groups are generally taken as the analytical tools of research.

Research methodology is a way to systematically solve the research problem. It may be understood as a science of studying how research is done scientifically. In it we study the various steps that are generally adopted by a researcher in studying his research problem along with the logic behind them. It is necessary for the researcher to know not only the research methods/techniques but also the methodology.

Researchers also need to understand the assumptions underlying various techniques and they need to know the criteria by which they can decide that certain techniques and procedures will be applicable to certain problems and others will not.

Research methodology has many dimensions and research methods do constitute a part of the research methodology. The scope of research methodology is wider than that of research methods. Thus, when we talk of research methodology we not only talk of the research methods but also consider the logic behind the methods we use in the context of our research study and explain why we are using a particular method or technique and why we are not using others so that research results are capable of being evaluated either by the researcher himself or by others.

The major methods used in legal research are:

- a. *Doctrinal Legal Research*, the central question of enquiry here is 'what is the law?' on a particular issue. It is concerned with finding the law, rigorously analyzing it and coming up with a logical reasoning behind it. Therefore it immensely contribute to the continuity, consistency and certainty of law. The basic material can be found in the statutory material i.e. primary sources as well in the secondary material. However, the research has its own limitations, it is subjective, that is limited to the perception of the researcher, away from the

actual working of the law, devoid of factors that lie outside the periphery of law, and fails to focus on the actual practice of the courts.

b. *Non-doctrinal Legal Research*, also known as socio-legal research, it looks into how the law and legal institutions moulds and affect the society. It employs methods taken from other disciplines in order to generate an empirical data to answer the questions. It can either be answering a problem, like to find the gap between idealism and social reality, could be tracing the results of legal decisions, also can assess impact of non-legal factors upon legal processes or decisions, or may be a reform based approach. It is about viewing law from the perspective of a different discipline to keep it organic and growing, that is, to put things in a context. Being empirical it is vital and valuable in revealing and explaining the legal practice and procedures and their impact on range of social institutions, like family, businesses, citizens, consumers.

c. *Comparative Legal Research*, this involves a comparison of legal doctrines, legislations vis-a-vis foreign laws. It highlights the cultural and social character of law and how it acts in different settings. So it is useful in developing and amending, and modifying the law. But a cautious approach has to be taken in blindly accepting the law of another social setting as an ideal because it might not act in the same manner in a different setting.

Research process:

Research process consists of series of actions or steps necessary to effectively carry out research and the desired sequencing of these steps. The research process consists of a number of closely related activities. But such activities overlap continuously rather than following a strictly prescribed sequence. At times, the first step determines the nature of the last step to be undertaken. However, the following order concerning various steps provides useful procedural guidelines regarding the research process:

- A. Formulating the research problem**
- B. Extensive literature survey**
- C. Development of working Hypotheses**
- D. Preparing the Research Design**

E. Determining Sample Design

Types of Sample Design:

- i. *Deliberate Sampling*
- ii. *Simple Random Sampling*
- iii. *Systematic Sampling*
- iv. *Stratified Sampling*
- v. *Quota Sampling*
- vi. *Cluster Sampling and Area Sampling*
- vii. *Multi-Stage Sampling*
- viii. *Sequential Sampling*

F. Collecting the Data

Methods of Data Collection:

- i. *By observation*
- ii. *Through personal interview*
- iii. *Through telephone interviews*
- iv. *By mailing of questionnaires*
- v. *Through schedules*

G. Execution of the project

H. Analysis of data

I. Hypothesis – testing

J. Generalizations and Interpretation

K. Preparation of the report or the theses.

Qualities of Good Research:

- I. Purpose of the research should be clearly defined and common concept be used.
- II. The research procedure used should be described in sufficient detail to permit another researcher to repeat the search for the advancement, keeping the continuity of what has already been attended.
- III. The procedural design of the research should be carefully planned to yield results data as objective as possible.

- IV. The researcher should report with complete frankness, flaws in procedural design and estimate their effects upon the findings.
- V. The Analysis of data should be sufficiently adequate to reveal its significance and the methods of analysis used should be appropriate. The validity and reliability of the data should be checked carefully.
- VI. Conclusions should be confined to those justified by the data of the research and limited to those for which the data provide an adequate basis.
- VII. Greater confidence in research is warranted if the researcher is experienced, has a good reputation in research and is a person of integrity.
- VIII. Good research is systematic.
- IX. Good research is logical.
- X. Good research is empirical.
- XI. Good research is replicable

Problems encountered by researchers in India:

- i. The lack of scientific training in the methodology of research is a great impediment for researchers in our country.
- ii. There is insufficient interaction between the University Research Departments on one side and Business Establishments, Government Departments and Research Institutions on the other side.
- iii. Most of the business units in our country do not have the confidence that the material supplied by them to researchers will not be misused and as such they are often reluctant in supplying the needed information to researchers.
- iv. Research studies overlapping one another are undertaken quite often for want of adequate information
- v. There does not exist a code of conduct for researchers and inter university and inter-departmental rivalries are also quite common.